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EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,405

Applicant(s)

AMONG ET AL.

Examiner

Igor Borissov

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 71-151 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 71-151 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claims 1-13 are objected to because of the following informalities:

Claim 1. The phrase (page 1, line 12) "*providing said user with a confirmation generated by said user*" appears to be misspelled. Claims 2-13 are objected to as being dependent on claim 1.

Appropriate corrections are required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 71-139 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure, which is not enabling. Specifically, independent claims 71, 89, 113 and 130 are directed to a system; however, there are no structural elements recited in the claims. The recited functionality, or specific content of information recited in the claims indicate necessity of certain structural elements, including computers and communications network, which are critical or essential to the practice of the invention, but not included in the claim(s) See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 72, 126, 130-139 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 72. The phrase "the remote server" lacks antecedent basis.

Claim 126. The phrase "said confirmation" lacks antecedent basis.

Claim 131. The phrase "the remote server" lacks antecedent basis.

Claim 130. The preamble of independent claim 130 does not correspond to the body of said claim. The preamble recites an interface system, while the body of the claim recites description of information.

The remaining claims are rejected as being dependent on claim 130.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-13, 71, 74-79, 82-88, 113, 115, 117-119, 122, 124, 125-129 and 140-151 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed invention is not within the technological arts.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. In re Toma at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, *State Street* never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

Contrary to the claims in the above-cited cases, in the present application, the claims are completely silent with regard to technology. The method claims are no more than a suggested idea of choosing by a user a travel package presented on a computer screen. Displaying information on the computer, or accessing information stored in the memory of a computer constitutes trivial use of technology. However, the claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d

Art Unit: 3629

1665, 1671 (*Bd. Pat. App. & Inter.* 2001)). Although Bowman is not precedential, it has been cited for its analysis.

Section 100 (b) of Title 35 U. S. C. defines "process" to mean "process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material." The definition of "process" to mean "process, art or method" makes it clear that the terms are synonymous. See S. Rep. No. 1979, 1952 U. S. Code Cong. & Admin. News at 2409-10. "when Congress approved the addition of the term "process" to the categories of patentable subject matter in 1952, it incorporated the definition of "process" that had evolved in the courts" (footnotes omitted), See *In re Schrader*, 22 F. 3d 290, 295, 30 USPQ2d 1455, 1459 (Fed. Cir. 1994), which included this definition from *Cochrane v. Deener*, 94 U. S. 780, 788 (1877): "A process is ... an act, or series of acts, performed upon the subject matter to be transformed and reduced to a different state or thing." The subject matter transformed does not to be a physical (tangible) object or article or substance, but can be physical, yet intangible, phenomena such as electrical signals or electromagnetic waves. See *Schrader*, 22 F. 3d at 295 n. 12, 30 USPQ2d at 1459 n. 12.

The claims in the present application are completely devoid of any means to carry out a "process" of transforming data.

Furthermore, in accordance with MPEP 2106 (IV)(B)(2)(b) "Statutory Process Claims", not all processes are statutory under 35 U.S.C. 101. *Schrader*, 22 F.3d at 296, 30 USPQ2d at 1460. To be statutory, a claimed computer related process must either: (A) result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application within the technological arts. See *Diamond v. Diehr*, 450 U.S. at 183-184, 209 USPQ at 6 (quoting *Cochrane v. Deener*, 94 U.S. 780, 787-788 (1877)).

The method claims in the present application do not appear to satisfy either of the two conditions listed above. First, the claims do not include limitations that would suggest a computer is being used to transform the data from one form to another that would place the invention in the technological arts. Second, disregarding the fact that there is no computer claimed that would physically transform the data, there does not appear to be any physical transformation of data. The claims merely recite *displaying* and *transmitting of final option* steps, wherein said *final option* appears to be an arbitrary abstract thing and not a discrete value resulting from a calculation of certain parameters by a computer or processor. All method steps may be performed a human, and computers and communications network may be utilized only for transmission of data (trivial use of technology). Thus, there neither appears to be any physical transformation of data from one form to another which is based upon an algorithm or a calculation by a computer or processor, nor is there any technology claimed that would be used to transform the data.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) a network system, or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. Furthermore, the preamble comprises a general description of all the elements or steps which are conventional or known (MPEP 608.01 (i) (e).), and therefore, does not constitute an invention.

As to the system claims, (claims 71 and 113), the phrases "*a first system for receiving a plurality of input signals*" and "*a first system that generates a display comprising a plurality of components (information)*" may be understood as merely software logical blocks or instructions enabling said functionality. Without reciting a computer-readable medium having said instructions embedded therein, said software logical blocks would constitute non-statutory subject matter.

Because the independently claimed invention is directed to an abstract idea which does not recite a limitation in the technological arts, those claims are not permitted under 35 USC 101 as being related to non-statutory subject matter. However, in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (US 6,553,346) (Walker).

Walker teaches a system for processing the sale of travel packages, comprising:

Independent Claims.

Claim 71. The package Conditional Purchase Option (CPO) management system (information source) and a buyer interface, said CPO management system is adapted to be in communication with said buyer or seller interfaces (C. 7, L. 31-34).

Language as to “*signals that comprises, a first input signal..., a second input signal..., plurality of output signals comprising, a first output signal..., a second output signal...*” does not include structural elements. So as claimed invention is directed to a system, said language is given no patentable weight. MPEP 2106 (II) (C) states: “*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*”

Claim 89. The package Conditional Purchase Option (CPO) management system (input system), and a buyer interface (output system), said CPO management system is adapted to be in communication with said buyer or seller interfaces (C. 7, L. 31-34), said buyer interface includes a display for presenting a plurality of travel components (C. 5, L. 25-64); said CPO management system is configured to prevent continue shopping an accepted travel component after a pre-bind is obtained (inventory monitor) (C. 7, L. 8-11).

Language as to “*a plurality of parameters..., a plurality of components..., a plurality of options...*” does not include structural elements. So as claimed invention is directed to a *system*, said language is given no patentable weight. MPEP 2106 (II) (C) states: “*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*”

Claim 113. The package Conditional Purchase Option (CPO) management system (first system) and a buyer interface (second system), said CPO management system is adapted to be in communication with said buyer or seller interfaces over a network, said CPO management system including a central controller and one or more servers (C. 7, L. 31-34), said buyer interface including a display for presenting a plurality of travel components, said plurality of travel components are supplied by a plurality of suppliers/third-parties (C. 5, L. 25-64).

Language as to “*display comprising a plurality of components..., a plurality of options each option including...*” does not include structural elements. So as claimed invention is directed to a *system*, said language is given no patentable weight. MPEP 2106 (II) (C) states: “*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*”

Claim 130. The package Conditional Purchase Option (CPO) management system (first system) and a buyer interface (second system), said CPO management system is adapted to be in communication with said buyer or seller interfaces over a network, said CPO management system including a central controller and one or more

Art Unit: 3629

servers (C. 7, L. 31-34), said buyer interface including a display for presenting a plurality of travel components, said plurality of travel components are supplied by a plurality of suppliers/third-parties (C. 5, L. 25-64).

Language as to "*a first object comprising at least one field..., a second object comprising a plurality of components..., an activation object ...*" does not include structural elements. So as claimed invention is directed to a *system*, said language is given no patentable weight. MPEP 2106 (II) (C) states: "*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*"

Claim 140.

Displaying a plurality of travel packages to a user, each travel package having a plurality of components to be selected by the user including air travel, hotel and car rental (Figs. 7-10B), said plurality of components are supplied by a plurality of suppliers/third-parties (C. 5, L. 25-64);

in response to selected packages (components) presenting the user with plurality of options, selecting by the user a final option including a price (C. 5, L. 25-64), updating inventory by preventing continue shopping an accepted travel component after a pre-bind is obtained (C. 7, L. 8-11).

Dependent Claim.

Claims 72, 90, 114 and 131. The package Conditional Purchase Option (CPO) management system (input system) and a buyer interface (output system), said CPO management system is adapted to be in communication with said buyer or seller interfaces over a network, said CPO management system including a central controller and one or more servers (C. 7, L. 31-34), said buyer interface including a display for presenting a plurality of travel components, said plurality of travel components are supplied by a plurality of suppliers/third-parties (C. 5, L. 25-64).

Claims 73-79, 82-88, 91-95, 98-100, 103-108, 116-119, 128, 129, 134-139. Said claims include language which does not recite structural elements. So as claimed invention is directed to a *system*, said language is given no patentable weight. MPEP

Art Unit: 3629

2106 (II) (C) states: "*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*"

Claims 80 and 81. Said system including suppliers/vendors which prevent continue shopping an accepted travel component after a pre-bind is obtained (C. 7, L. 8-11).

Claims 96 and 97. Said system including suppliers/third-parties which receive a pre-bind for a travel component (C. 7, L. 8-11). Language as to "*providing to said third-party a plurality of said confirmations...*" is directed to a method step and does not include structural elements. So as claimed invention is directed to a *system*, said language is given no patentable weight. MPEP 2106 (II) (C) states: "*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*"

Claims 101 and 102. Said system including suppliers/third-parties, which prevent (update inventory) continue shopping an accepted travel component after a pre-bind is obtained (C. 7, L. 8-11).

Claims 109 - 111. Said CPO management system including a central controller and one or more servers (C. 7, L. 31-34) for storing selected by the user a final option including a price (C. 5, L. 25-64).

Claim 112. See reasoning applied to claim 89.

Claim 115. See reasoning applied to claim 113.

Claim 120. Said server as in claim 113. Said system including suppliers/third-parties, which receive a pre-bind for a travel component (C. 7, L. 8-11). Language as to "*said server transmitting to said user...*" is directed to a method step and does not include structural elements. So as claimed invention is directed to a *system*, said language is given no patentable weight. MPEP 2106 (II) (C) states: "*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*"

Claims 121-127. See reasoning applied to claim 113.

Claims 132-133. Said claims include language which recites method steps and does not include structural elements. So as claimed invention is directed to a *system*, said language is given no patentable weight. MPEP 2106 (II) (C) states: "*Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*"

Claims 141-151. See reasoning applied to claim 140.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6,553,346) (Walker) in view of DeLorme et al. (US 5,948,040).

Walker teaches a method and system for processing the sale of travel packages, comprising:

Independent Claim

Claim 1.

Displaying a plurality of travel packages to a user, each travel package having a plurality of components to be selected by the user including air travel, hotel and car rental (Figs. 7-10B), said plurality of components are supplied by a plurality of suppliers/third-parties (C. 5, L. 25-64);

in response to selected packages (components) presenting the user with plurality of options, selecting by the user a final option including a price (C. 5, L. 25-64), wherein said communications is conducted over the Internet, thereby indicating real-time interaction capabilities (C. 9, L. 24).

Walker does not teach confirming reservation information.

Art Unit: 3629

DeLorme teaches a travel reservation method and system, wherein a user selects various components for a travel package over the Internet in real-time environment, said components including air travel, hotel and car rental, wherein after the desired components are selected, the user is provided with a confirmation of said arrangements (C. 16, L. 24; C. 14, L. 22-47).

It would have been obvious to one having ordinary skill in art the time the invention was made to modify Walker to include providing a confirmation of the reserved arrangements, as disclosed in DeLorme, because it would advantageously allow the user to prove his rights for the reserved services in the event of system malfunction.

Dependent Claims

Claims 2-13. See reasoning applied to claim 1.

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649 before April 13, 2005, and (571) 272-6801 after that date.

Art Unit: 3629

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist before April 13, 2005, whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702 before April 13, 2005, and (571) 272-6812 after that date.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

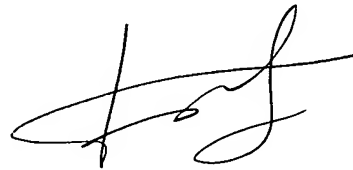
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or faxed to:

(703) 872-9306 [Official communications; including After Final
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

Igor Borissov
Patent Examiner
Art Unit 3629



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03/03/2005